

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied in part; Dismissed in part	<b>Appeal Number:</b>	2308648
<b>Decision Date:</b>	11/28/2023	<b>Hearing Date:</b>	10/27/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**  
*Pro se via telephone*

**Appearance for MassHealth:**  
Donna Burns, RN *via telephone*



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization (PA) Personal Care Attendant (PCA)
<b>Decision Date:</b>	11/28/2023	<b>Hearing Date:</b>	10/27/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<b>Hearing Location:</b>	Quincy Harbor South		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated August 21, 2023, MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for three Activities of Daily Living ("ADLs"). (See 130 CMR 422.410(A)(1), (3), (7); and 130 CMR 450.204(A)(1); Exhibit (Ex.) 1; and Ex. 6, pp. 4-6). The appellant filed this appeal in a timely manner on September 21, 2023. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032(A)(3)).

### Action Taken by MassHealth

MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for three ADLs.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1), (3), (7); and 130 CMR 450.204(A)(1) in modifying the requested times for these ADLs.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the [REDACTED], with diagnoses of obesity with gastro-esophageal reflux disease, obstructive sleep apnea, osteoarthritis to her knees and back, unspecified convulsions, question of seizure disorder, gait disturbance, lower back pain radiating to her right leg, asthma, inflammatory bowel disease, right hip pain, mood disorder, anxiety, and depression. (Ex. 6, p. 8). The PCM agency submitted a reevaluation for PCA services on August 7, 2023. (Ex. 6, p. 7). In its submission, the PCM agency stated the following:

05/29/2023: Home visit w/ consumer. [REDACTED] present. PE in 2021. Treated w/Elequis. Now DOE d/t asthma - adult onset cardiovascular disease diagnosed this past week. Determined by blood test. Back pain persists. R hip pain for 6 months. Will have studies to find cause. Hospitalized at Holyoke Medical Center ED w/ seizure that happened at MD office. Doesn't remember when seizures are triggered by multiple stimuli. Often at very low levels of stimulation." (Ex. 6, p. 8).

The PCM agency requested 14 hours and 30 minutes per week of PCA services for one year. (Ex. 1; Ex. 6, pp. 4-6). In a notice dated August 21, 2023, MassHealth informed the appellant that it approved 13 hours of PCA services per week for dates of service from August 21, 2023 through August 20, 2024. (Ex. 1; Ex. 6, pp. 4-6). In approving these services, MassHealth modified the time requested for three activities of daily living (ADLs): transfers, hair wash, and bowel care. (Ex. 1; Ex. 6, pp. 4-6). After considering the appellant's testimony, the MassHealth representative overturned the modification to bowel care and approved the time the PCM agency requested for that ADL, which was four minutes, two times per day, seven days per week. (Ex. 6, p. 21).

### 1. Transfers

The PCM agency requested two minutes, 10 times per day, seven days per week. (Ex. 6, p. 12). The PCM agency stated that the appellant required moderate transfer assistance off all surfaces due to knee pain, obesity, dizziness, shortness of breath on exertion, fatigue, and new onset of seizures. (Ex. 6, p. 13). MassHealth modified this request, approving two minutes, eight times per day, seven days per week. (Ex. 1; Ex. 6, p. 6). MassHealth stated that it modified the appellant's request for assistance with transfers because the time she requested was longer than ordinarily required with someone of her physical needs. (Ex. 1; Ex. 6, p. 5). MassHealth cited 130 CMR 422.410(A)(1) and 450.204(A)(1)). (Ex. 1; Ex. 6, p. 5).

The MassHealth representative stated that transfers include assisting a member to stand from sitting or lying to standing. The MassHealth representative some transfers are considered part of other ADLs like bathing and toileting and are not considered as part of this ADL. The MassHealth representative stated that less than 10 transfers per day is generally the standard of care MassHealth uses.

The MassHealth representative asked the appellant what kind of assistance she required to get out of a chair. The appellant responded that she needs someone to pull her up from a chair. The appellant stated that her right leg is number the majority of the time. When she cannot move that leg or foot, she needs help until she gets the feeling back. The MassHealth representative stated that MassHealth only modified the frequency of transfers, and that the transfers did not include transfers that would occur secondary to bathing or toileting. She stated that, by adding transfers that are secondary to other activities, the appellant receives 18 transfers per day. The appellant stated that requires assistance with transfers beyond what the PCM agency requested.<sup>1</sup>

## 2. Bathing/Hair Wash

The PCM agency requested five minutes per day for hair washing. (Ex. 6, p. 15). The PCM agency stated that the appellant required moderate assistance with bathing, which included shampooing. (Ex. 6, p. 16). The PCM agency also stated that the appellant had limited reach and bend and instability with standing. (Ex. 6, p. 16). MassHealth denied any time for hair washing as a separate activity. In its notice, MassHealth stated that time the appellant requested was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 5). MassHealth cited 130 CMR 422.410(A)(3) and 450.204(A)(1). (Ex. 1; Ex. 6, p. 5).

The MassHealth representative stated that the appellant requested and MassHealth approved 20 minutes and, separately, 10 minutes per day for bathing and that the separate time requested for hair washing did not appear to be medically necessary. (Ex. 6, p. 15). The MassHealth representative asked the appellant if she washed her hair separately from her daily bathing. The appellant stated that, while she sometimes does shampoo her hair while showering, she also does have her hair washed in the sink. Despite questioning, the appellant could not or would not describe the average frequency of washing her hair outside of her shower, or even describe whether she had done so in the previous week.

## Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is an individual under the [REDACTED], with diagnoses of obesity with gastro-esophageal reflux disease, obstructive sleep apnea, osteoarthritis to her knees and back, unspecified convulsions, question of seizure disorder, gait disturbance, lower back pain radiating to her right leg, asthma, inflammatory bowel disease, right hip pain, mood disorder, anxiety, and depression. (Ex. 6, p. 8).

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<sup>1</sup> The appellant also mentioned at this point that she required assistance with moving around her home, including up and down stairs. The MassHealth representative noted that the PCM agency did not request assistance with ambulation for the appellant in its request. (See Ex. 6, p. 12). She recommended that the appellant talk to the PCM agency regarding this.

2. The PCM agency submitted a reevaluation for PCA services on August 7, 2023. (Ex. 6, p. 7).
3. The PCM agency requested 14 hours and 30 minutes per week of PCA services for one year. (Ex. 1; Ex. 6, pp. 4-6).
4. In a notice dated August 21, 2023, MassHealth informed the appellant that it approved 13 hours of PCA services per week for dates of service from August 21, 2023 through August 20, 2024. (Ex. 1; Ex. 6, pp. 4-6).
5. In approving these services, MassHealth modified the time requested for three ADLs: transfers, hair wash, and bowel care. (Ex. 1; Ex. 6, pp. 4-6).
6. After considering the appellant's testimony, the MassHealth representative overturned the modification to bowel care and approved the time the PCM agency requested for that ADL, which was four minutes, two times per day, seven days per week. (Ex. 6, p. 21).
7. For transfers, the PCM agency requested two minutes, 10 times per day, seven days per week. (Ex. 6, p. 12).
8. The PCM agency stated that the appellant required moderate transfer assistance off all surfaces due to knee pain, obesity, dizziness, shortness of breath on exertion, fatigue, and new onset of seizures. (Ex. 6, p. 13).
9. MassHealth modified this request, approving two minutes, eight times per day, seven days per week. (Ex. 1; Ex. 6, p. 6).
10. In its notice, MassHealth stated that it modified the appellant's request for assistance with transfers because the time she requested was longer than ordinarily required with someone of her physical needs. (Ex. 1; Ex. 6, p. 5).
11. Transfers include assisting a member to stand from sitting or lying to standing. (Testimony of the MassHealth representative).
12. Some transfers are considered part of other ADLs like bathing and toileting and are not considered as part of this ADL. (Testimony of the MassHealth representative).
13. The appellant received ten further transfers per day secondary to other ADLs. (Testimony of the MassHealth representative).
14. The PCM agency requested five minutes per day for hair washing. (Ex. 6, p. 15).
15. The PCM agency stated that the appellant required moderate assistance with bathing, which included shampooing. (Ex. 6, p. 16).

16. The PCM agency also stated that the appellant had limited reach and bend and instability with standing. (Ex. 6, p. 16).
17. MassHealth denied any time for hair washing as a separate activity. In its notice, MassHealth stated that time the appellant requested was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 5).
18. The appellant requested and MassHealth approved 20 minutes and, separately, 10 minutes per day for bathing and that the separate time requested for hair washing did not appear to be medically necessary. (Ex. 6, p. 15).
19. The appellant sometimes washed her hair in the shower and, at other times, has her hair washed in the sink but did not indicate whether she did so with frequency. (Testimony of the appellant).

## **Analysis and Conclusions of Law**

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (*Id.*). MassHealth covers activity time performed by a PCA in aiding with ADLs and IADLs. (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment as well as physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.402; 422.410(A)(1), (3)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. (130 CMR 450.204). A service is medically necessary if:

- (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the MassHealth agency . . . (130 CMR 450.204(A)).

The appellant has not shown by a preponderance of the evidence that MassHealth incorrectly determined the time for either transfers or hair washing. The record shows that MassHealth approved eight transfers per day and that MassHealth also approved a further ten transfers per

day that were secondary to other ADLs (e.g. toileting and bathing). The appellant provided no evidence that she required more than the eight requested transfers. The record shows that the appellant receives a total of 30 minutes per day for bathing and that this could include hair washing. Although the appellant did testify that she sometimes washes her hair separately from her other bathing, she could not describe the frequency of this occurrence.

For the above stated reasons, with regard to transfers and hair washing, this appeal is DENIED IN PART.

After considering the appellant's testimony, the MassHealth representative overturned the modification to bowel care and approved the frequency requested. MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (Id.). Because overturned the modification to bowel care and approved the requested frequency of two times per day, with regard to bowel care the appeal is DISMISSED.

## **Order for MassHealth**

If it has not already done so, MassHealth should approve four minutes, two times per day, seven days per week for bowel care going back to the beginning of the PA period.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215